

AMENDED IN SENATE JANUARY 5, 2004

AMENDED IN SENATE APRIL 22, 2003

SENATE BILL

No. 433

Introduced by Senator Ortiz

February 20, 2003

~~An act to add Division 8.6 (commencing with Section 22970) to the~~
An act to amend Sections 22973.1, 22973.2, 22974.8, and 22980.2 of,
and to add Section 22980.05 to, the Business and Professions Code,
relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

SB 433, as amended, Ortiz. Tobacco products: licensing of retailers.

(1) The Cigarette and Tobacco Products Licensing Act of 2003 requires the board to issue a license to a retailer upon receipt of a completed application and payment of fees, unless the retailer has previously been issued a license that is suspended or revoked by the board, the application is for a license or renewal of a license for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings, the retailer has been convicted of a specified felony, or the retailer does not possess all required permits or licenses.

This bill would additionally prohibit the board from issuing a license to a retailer if the application is for a license for a retail location that has no fixed geographical location.

(2) The act requires the board to, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local

tobacco control ordinances, access to the board's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency. The act limits access to the purposes of enforcing tobacco control laws, and requires adherence to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

This bill would require the board to additionally provide access to any local health department, and would authorize access for the additional purposes of conducting public health surveillance and educational outreach. The bill would require the State Board of Equalization to make available to the public, via a searchable Web site, the business name, owner name, and physical address of every licensed cigarette or tobacco product retailer.

(3) The act requires the board to take action against a retailer convicted of furnishing tobacco products to a person under 18 years of age. Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the act requires the board to notify the retailer and include instructions for appealing the license suspension or revocation. The act prescribes penalties for the first through eighth convictions. The act limits when the board has authority to take action against retailers.

This bill would make changes to those penalties for convictions. The bill would require a hearing to appeal a license suspension or revocation to be conducted in accordance with formal administrative adjudication procedures. The bill would repeal the limitations on the board's authority to take action against retailers. The bill would require the board to cause to be posted in a conspicuous place on or about the retailer's licensed premises a notice stating that the retailer's license to sell cigarette and tobacco products has been suspended by order of the board because of violation of state laws or regulations.

(4) The act prohibits a person or entity from engaging in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, punishable as a misdemeanor by a fine not to exceed \$5,000, or imprisonment not exceeding one year in a county jail, or both.

This bill would expand that prohibition to additionally include a person or entity that engages in giving away or otherwise furnishing cigarettes or tobacco products under those circumstances, thereby imposing a state-mandated local program by changing the definition of a crime.



The bill would require a state or local law enforcement agency to notify the board of any violation involving licensed premises within 30 days of a final judgment and would specify that the notice and any corroborating evidence given to the board be presumed true, subject to rebuttal. By creating additional duties for a local law enforcement agency, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law vests the State Department of Health Services with the primary responsibility for the enforcement of tobacco control laws prohibiting the sale of tobacco products to minors, and requires the department to conduct random onsite inspections at retail sites. Existing law, the Cigarette and Tobacco Products Tax Law, requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization.~~

~~This bill would further require retailers of cigarette and tobacco products to be licensed by the State Board of Equalization by July 1, 2004, as specified. The bill would provide specified procedures for the application and display of these licenses, among others. The bill would also require the State Board of Equalization to make related database records available to specified entities, and further require public access to this information on the board's Web site.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Division 8.6 (commencing with Section 22970)~~
2

1 SECTION 1. Section 22973.1 of the Business and Professions
2 Code is amended to read:

3 22973.1. (a) The board shall issue a license to a retailer upon
4 receipt of a completed application and payment of the fees
5 prescribed in Section 22973, ~~unless~~ but may not issue a license if
6 any of the following apply:

7 (1) The retailer, or if the retailer is not an individual, any person
8 controlling the retailer, has previously been issued a license that is
9 suspended or revoked by the board for violation of any of the
10 provisions of this division.

11 (2) The application is for a license or renewal of a license for
12 a retail location that is the same retail location as that of a retailer
13 whose license was revoked or is subject to revocation proceedings
14 for violation of any of the provisions of this division, unless:

15 (A) It has been more than five years since a previous license for
16 the retail location was revoked.

17 (B) The person applying for the license provides the board with
18 documentation demonstrating that the applicant has acquired or is
19 acquiring the premises or business in an arm's length transaction.
20 For purposes of this section, an "arm's length transaction" is
21 defined as a sale in good faith and for valuable consideration that
22 reflects the fair market value in the open market between two
23 informed and willing parties, neither under any compulsion to
24 participate in the transaction. A sale between relatives, related
25 companies or partners, or a sale for the primary purpose of
26 avoiding the effect of the violations of this division that occurred
27 at the retail location, is presumed not to be made at "arm's length."

28 (3) *The application is for a license for a retail location that has*
29 *no fixed geographical location, including, but not limited to, sales*
30 *by persons on foot or from vehicles.*

31 (4) The retailer, or if the retailer is not an individual, any person
32 controlling the retailer, has been convicted of a felony pursuant to
33 Section 30473 or 30480 of the Revenue and Taxation Code.

34 ~~(4)~~

35 (5) The retailer does not possess all required permits or licenses
36 required under the Revenue and Taxation Code.

37 (b) (1) Any retailer who is denied a license may petition for a
38 redetermination of the board's denial of the license within 30 days
39 after service upon that retailer of the notice of the denial of the
40 license. If a petition for redetermination is not filed within the

30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the retailer has so requested in the petition, shall grant the retailer an oral hearing and shall give the retailer at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

SEC. 2. Section 22973.2 of the Business and Professions Code is amended to read:

22973.2. (a) The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a local law enforcement agency, and any ~~agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency~~ local health department, access to the board's database of licenses issued to retailers. The agencies authorized by this section to access the

1 board's database ~~shall only access and use the board's database~~
2 *may access the database of licensees* for purposes of enforcing
3 tobacco control laws ~~and shall adhere to all state laws, policies, and~~
4 ~~regulations pertaining to the protection of personal information~~
5 ~~and individual privacy~~, *conducting public health surveillance,*
6 *and educational outreach.*

7 (b) *The State Board of Equalization shall make available to the*
8 *public, via a searchable Web site, the business name, owner name,*
9 *and physical address of every licensed cigarette or tobacco*
10 *product retailer.*

11 SEC. 3. *Section 22974.8 of the Business and Professions Code*
12 *is amended to read:*

13 22974.8. (a) (1) The board shall take action against a
14 retailer; convicted of a violation of either the ~~Stake~~ STAKE Act
15 (Division 8.5 (commencing with Section 22950) or Section 308,
16 308.1, 308.2, or 308.3 of the Penal Code, according to the schedule
17 set forth in subdivision (b).

18 (2) Convictions of violations by a retailer at one retail location
19 may not be accumulated against other locations of that same
20 retailer.

21 (3) Convictions of violations accumulated against a prior retail
22 owner at a licensed location may not be accumulated against a new
23 retail owner at the same retail location.

24 (4) Prior to suspending or revoking a retailer's license to sell
25 cigarette and tobacco products, the board shall notify the retailer.
26 The notice shall include instructions for appealing the license
27 suspension or revocation.

28 (b) (1) Upon the first conviction of a violation ~~of either the~~
29 ~~STAKE Act (Division 8.5 (commencing with Section 22950) or~~
30 ~~Section 308 of the Penal Code~~, the retailer shall receive a warning
31 letter from the board that delineates the circumstances under which
32 a retailer's license may be suspended or revoked and the amount
33 of time the license may be suspended or revoked. ~~The retailer and~~
34 ~~its employees shall receive training on tobacco control laws from~~
35 ~~the Department of Health Services upon a first conviction.~~

36 (2) Upon the second conviction of a violation ~~of either the~~
37 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
38 ~~Section 308 of the Penal Code~~ within 12 months, the retailer shall
39 ~~be subject to a fine of five hundred dollars (\$500) board shall~~

1 *suspend the retailer's license to sell cigarette and tobacco products*
2 *for 30 days.*

3 (3) Upon the third conviction of a violation of ~~either the~~
4 ~~STAKE Act (Division 8.5 (commencing with Section 22950)) or~~
5 ~~Section 308 of the Penal Code~~ within 12 months, the retailer shall
6 ~~be subject to a fine of one thousand dollars (\$1,000)~~ board shall
7 *suspend the retailer's license to sell cigarette and tobacco products*
8 *for 90 days.*

9 (4) Upon the fourth ~~to the seventh~~ conviction of a violation of
10 ~~either the STAKE Act (Division 8.5 (commencing with Section~~
11 ~~22950)) or Section 308 of the Penal Code~~ within 12 months, the
12 board shall suspend the retailer's license to sell cigarette and
13 tobacco products for ~~90~~ 120 days.

14 (5) *Upon the fifth conviction of a violation within 24 months,*
15 *the board shall suspend the retailer's license to sell cigarette and*
16 *tobacco products for 365 days.*

17 (6) Upon the eighth conviction of a violation of ~~the STAKE Act~~
18 ~~(Division 8.5 (commencing with Section 22950) or Section 308 of~~
19 ~~the Penal Code~~ within 24 months, the board shall revoke the
20 retailer's license to sell cigarette and tobacco products.

21 (c) The decision of the board to suspend or revoke the retailer's
22 license may be appealed to the board within 30 days after the notice
23 of suspension or revocation. All appeals shall be submitted in
24 writing. *A hearing to appeal a license suspension or revocation*
25 *shall be conducted in accordance with Chapter 5 (commencing*
26 *with Section 11500) of Part 1 of Division 3 of Title 2 of the*
27 *Government Code. The license suspension shall remain in effect*
28 *while the hearing is conducted. A license may not be reinstated*
29 *until the board provides the retailer with notice that the license*
30 *suspension has been overturned.*

31 (d) ~~The board's authority to take action against retailers, as set~~
32 ~~forth in this section, commences on the date of the release of the~~
33 ~~results from the survey undertaken by the Department of Health~~
34 ~~Services pursuant to Section 22952 of the Business and~~
35 ~~Professions Code Section 22952 to comply with Section 1926 of~~
36 ~~Title XIX of the federal Public Health Service Act (42 U.S.C.~~
37 ~~300x 26), and any implementing regulations adopted in relation~~
38 ~~thereto by the United States Department of Health and Human~~
39 ~~Services, showing that the youth purchase survey finds that 13~~
40 ~~percent or more of youth were able to purchase cigarettes. The~~

~~board's authority to take action under this section is inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes. Whenever the board suspends a retailer's license to sell cigarette and tobacco products, the board shall, on the date the suspension becomes effective, cause to be posted in a conspicuous place on or about the retailer's licensed premises a notice in a form prescribed by the board, stating that the license has been suspended by order of the board because of violation of state laws or regulations.~~

(1) During the suspension period, a person may not remove, alter, cover, or in any way disturb the posted notice of suspension.

(2) A person may not place, permit, or allow to be placed in, at, or upon the licensed premise, a notice or statement of reason or purpose, indicating that the premises have been closed or the sale of tobacco products is discontinued for any reason other than stated in the notice of suspension.

(3) During the suspension period, the retailer may operate his or her business, provided there is no sale or distribution of tobacco products and no commercial speech promoting the sale or distribution of tobacco products on the premises.

SEC. 4. Section 22980.05 is added to the Business and Professions Code, to read:

22980.05. (a) A state or local law enforcement agency shall notify the board of any violation over which the board has jurisdiction that involves a licensee or licensed premises, within 30 days of a final judgment.

(b) Notice by a state or local law enforcement agency to the board shall include all of the following:

(1) A certified copy of the final judgment for a criminal or civil case.

(2) The retailer's license information for the location at which the violation occurred.

(3) If the judgment is only against an employee, the result of an administrative hearing concluding that the sales clerk was an agent of the retailer at the time of the violation.

(c) Notice and any corroborating evidence given to the board by a law enforcement agency or the State Department of Health Services that a licensee has sold a tobacco product to a person

1 *under 18 years of age shall be presumed by the board to be true,*
2 *subject to rebuttal.*

3 *SEC. 5. Section 22980.2 of the Business and Professions Code*
4 *is amended to read:*

5 22980.2. (a) A person or entity that engages in the business
6 of selling, *giving away, or otherwise furnishing* cigarettes or
7 tobacco products in this state without a license or after a license has
8 been suspended or revoked, and each officer of any corporation
9 that so engages in business, is guilty of a misdemeanor punishable
10 as provided in Section 22981.

11 (b) Each day after notification by a law enforcement agency
12 that a manufacturer, wholesaler, distributor, importer, retailer, or
13 any other person required to be licensed under this act ~~offers-sells,~~
14 *gives away, or otherwise furnishes* cigarette and tobacco products
15 ~~for sale or exchange~~ without a valid license for the location from
16 which they are offered ~~for sale~~ shall constitute a separate violation.

17 (c) Continued sales, *giving away, or otherwise furnishing of*
18 *cigarettes or tobacco products* after a notification of suspension or
19 revocation shall constitute a violation of Section 22981, and shall
20 result in the seizure of all cigarettes and tobacco products in the
21 possession of the person by the board or a law enforcement agency.
22 Any cigarettes and tobacco products seized by the board or by a
23 law enforcement agency shall be deemed forfeited.

24 *SEC. 6. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution for*
26 *certain costs that may be incurred by a local agency or school*
27 *district because in that regard this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*

33 *However, notwithstanding Section 17610 of the Government*
34 *Code, if the Commission on State Mandates determines that this*
35 *act contains other costs mandated by the state, reimbursement to*
36 *local agencies and school districts for those costs shall be made*
37 *pursuant to Part 7 (commencing with Section 17500) of Division*
38 *4 of Title 2 of the Government Code. If the statewide cost of the*
39 *claim for reimbursement does not exceed one million dollars*

1 (\$1,000,000), reimbursement shall be made from the State
2 Mandates Claims Fund.

3 is added to the Business and Professions Code, to read:

4
5 DIVISION 8.6.—RETAILERS OF TOBACCO PRODUCTS

6
7 22970.—It is the intent of the Legislature to require a retailer
8 that sells cigarette and tobacco products in this state to obtain from
9 the State Board of Equalization a valid license to sell cigarette and
10 tobacco products and to maintain that license on the premises for
11 which the license was issued.

12 22971.—For purposes of this division:

13 (a) “Board” means the State Board of Equalization.

14 (b) “License” means a license authorized to be issued by the
15 board pursuant to this division.

16 (c) “Licensee” means any person holding a license issued by
17 the department.

18 (d) “Retailer” means any person or entity that sells cigarettes
19 or tobacco products at retail to the general public.

20 22972. (a) On or before July 1, 2004, a retailer shall have in
21 place and maintain a license to engage in the sale of cigarettes or
22 other tobacco products to be issued by the board. A retailer that
23 owns or controls more than one retail location shall obtain a
24 separate license for each retail location, but may submit a single
25 application for those licenses.

26 (b) The retailer shall conspicuously display the license at each
27 retail location in a manner visible to the public.

28 (c) A license is not assignable or transferable. A person who
29 obtains a license as a retailer who ceases to do business as specified
30 in the license, or who never commenced business, or whose license
31 is suspended or revoked, shall immediately surrender the license
32 to the board.

33 22973.—An application for a license shall be filed on or before
34 June 30, 2004, on a form prescribed by the board and shall include
35 all of the following information:

36 (a) The name, address, and telephone number of the applicant.

37 (b) The business name, address, and telephone number of each
38 retail location. For applicants who control more than one retail
39 location, an address for receipt of correspondence or notices from
40 the board, such as the headquarters or corporate office of the

1 ~~retailer, shall also be included on the application and listed on the~~
2 ~~license. Citations issued to licensees shall be forwarded to all~~
3 ~~addresses on the license.~~

4 ~~22974. The board shall make available to the State~~
5 ~~Department of Health Services, the office of the Attorney General,~~
6 ~~any law enforcement agency, and any agency authorized to~~
7 ~~enforce local and state tobacco control laws, the board's database~~
8 ~~of licenses issued to retailers. The agencies authorized by this~~
9 ~~section to access the board's database shall only access and use that~~
10 ~~database for purposes of official communication with the licensees~~
11 ~~and for enforcing tobacco control laws. The agencies authorized~~
12 ~~by this section to access the board's database shall adhere to all~~
13 ~~state laws, policies, and regulations pertaining to the protection of~~
14 ~~personal information and individual privacy.~~

15 ~~22975. The board shall make available to the public on its~~
16 ~~Web site a list of all current and past holders of tobacco licenses,~~
17 ~~their name, address and location, and information pertaining to~~
18 ~~each licensee, including, but not limited to, violations,~~
19 ~~suspensions, or revocations of those licenses.~~

